

**AUDIT AND STRATEGY COMMITTEE**

**12 DECEMBER 2006**

- 37 (28) **TAYLOR REVIEW OF POLICE DISCIPLINARY ARRANGEMENTS – NEW MISCONDUCT PROCEDURE FOR POLICE OFFICERS** – The Chief Executive submitted a report that outlined the progress of the development of new misconduct procedures which were as a result of a recommendation contained in the Taylor Review of Police Disciplinary Arrangements that had been published in January 2005.

The Head of Professional Standards indicated that the implementation date for the procedures was at the present time unknown.

**Resolved** – (a) That the issues set out in the report, in particular the procedures at paragraph 6, dealing with resignation and retirement, be noted; (b) that the Force be requested to submit a report when the new misconduct and unsatisfactory performance procedures are finalised highlighting the key features, their plans for implementing them locally and how the other recommendations outlined in the Taylor Review are being taken forward, and (iii) **that the report be referred to the Personnel Committee given the potential implications for Chief Officers.**

## **Taylor Review of Police Disciplinary Arrangements – New Misconduct Procedures for Police Officers**

### **BACKGROUND**

1. In January 2005 William Taylor published his report on his review of Police Disciplinary Arrangements in the Police Service. There were six recommendations. The first recommendation was that a new single code of professional standards should be produced to be a touchstone for individual behaviour. This was presented to the Personnel Committee at its April meeting (minute 70 refers) and is largely complete. The second recommendation referred to the need for new misconduct procedures.

### **PROGRESS ON THE DEVELOPMENT OF NEW MISCONDUCT PROCEDURES**

2. The development of new misconduct procedures and unsatisfactory performance procedures is being developed by the Police Advisory Board (PAB) Working Party. The draft misconduct procedures have been developed along the lines recommended by the Taylor Review and, once implemented, will apply to all police officers and special constables. Procedures for senior officers are included and are largely based on ACAS principles, with specific differences to reflect the special status of police officers inasmuch as police officers are not employees but hold the 'office of constable' as crown servants; therefore there are some differences from normal employment law.
3. The existing misconduct system is seen as adversarial, hence the new misconduct procedures are meant to develop a learning culture within forces and to represent a key part of an improved discipline system. Taylor was keen to move the system towards that used for other employees and to make a distinction between misconduct and gross misconduct with the overall intention to:
  - Promote the fair, timely, and proportionate handling of each case
  - Be easy to understand, to ensure that both members of the police service and the public can see how an incident of alleged misconduct will be dealt with; and
  - Ensure that the police service learns the lessons from each case
4. On the whole the draft misconduct procedures have been warmly received although there are some outstanding issues, which are referred to below. There is an expectation that the new misconduct and unsatisfactory performance procedures should be properly implemented, with appropriate training, regulations, and amendments to other relevant guidance and policies such as the IPCC statutory guidance.

## **OUTSTANDING ISSUES**

### 5. Unsatisfactory Performance

The current unsatisfactory performance procedures potentially involve a four phase process: management action, first and second written warnings, and dismissal. In addition, there are provisions for appeal (albeit one proportional to the phase involved) at every stage. As the primary criticism made of the current unsatisfactory performance procedures is that their time consuming nature deters managers and supervisors from using them, it has been advocated that this process be shortened by one stage. Discussions are ongoing with the PAB working group.

### 6. Retirement and Resignation

The consultation on the draft misconduct procedures specifically raised the issue of whether or not a police officer subject to a misconduct process should be permitted to resign or retire as of right. Currently this can only occur with the permission of the Chief Constable. However, the Taylor Review recommended that this provision should be removed and officers treated like normal employees under employment law, and thus be able to leave the service at any point. Arguably, this would have benefits in regard to the timeliness and proportionality of proceedings, whilst reducing the costs and abstraction associated with suspensions. However the Association of Police Authorities (APA) has resisted this proposal on the grounds that public confidence in the police could be undermined if officers were not seen to be held to account for their actions. It could also be argued that if the new misconduct process is implemented, the arguments in favour of the change – such as greater timeliness and reduced cost – will be reduced in any event. This view is out of step with most of the other organisations sitting on the PAB working group (ACPO, IPCC etc) who believe that it is fairer to treat officers like other employees; it enables both the officer and the organisation to move on more swiftly; that the public interest lies in allowing officers to leave rather than retaining them suspended on full pay for long periods and that preventing officers from resigning is often due to a desire for retribution.

There might also be some legal issues to consider in that preventing an officer from resigning could be at odds with Human Rights legislation and the Home Office are currently seeking advice.

### 7. Chief Officers

The draft procedures in relation to chief officer misconduct and unsatisfactory performance have also been largely welcomed. However, there were specific issues with the language used in some instances, and the detail of particular provisions, both of which required amendment to ensure they are appropriate for the relationship between authorities and chief police officers. In addition the Chief Police Officers Association (CPOSA) have raised a number of concerns about insufficient independence, improper panel and tribunal composition at various phases, constitutional implications, and the

multiplication of avenues for removing a chief officer alongside those that presently exist.

In particular, while the previous proposals included a member of the police authority on the panel for a level two hearing (that is, a hearing that could potentially result in dismissal) and the appeal panel in some instances in cases involving chief officers, it has been suggested that to ensure the independence of the procedure that the panel should instead include a member of a police authority for another area. While this would still represent an advance over current procedures, which have no role for police authority members, and it would be an acknowledgement of the role of police authority members in representing the public interest, it would be a significant change to the draft procedures. If it is made, police authorities may wish to see a strengthening of their oversight role in other aspects of the procedures.

It is possible that, given the wide ranging nature of CPOsAs concerns that the provisions relating to Chief Officers are detached from the overall work and considered separately so that the progress is not delayed towards finalising and implementing the mainstream procedures.

8. The Police Officer Misconduct Procedure reflects the expectations that the police service and the public have of how police officers conduct will be dealt with by police managers. It is not intended to describe every possible situation but rather set a framework which everyone can easily understand. It should enable everybody to know what the misconduct procedures will be and how they will be applied.

## **RECOMMENDATIONS**

9. It is recommended that:
  - (i) Members note the issues set out in this report, in particular the procedures at paragraph 6, which deal with resignation and retirement.
  - (ii) Request a report from the Force when the new misconduct and unsatisfactory performance procedures are finalised highlighting the key features, their plans for implementing them locally and how the other recommendations outlined in the Taylor Review are being taken forward.
  - (iii) This report is also referred to the Personnel Committee given the potential implications for Chief Officers.

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Background documents: Taylor Review of Police Disciplinary Arrangements  
New Misconduct Procedure for Police Officers